SIONG ELECTRONICS (M) SDN. BHD.

v.

CHAN MOK ON & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[CIVIL SUIT NO. P. 1078 OF 1984]
1 MARCH 1985

TORT: *Defamation - Publication of notice of resumption of business - Notice stating judgment in default and attachment order set aside - Whether defamatory - Injunction - Further publication of notice - Whether likely.*

The plaintiff sued the 1st and 2nd defendants and obtained a judgment in default of appearance, and an attachment order against their goods lying at the premises of the 3rd defendant. Before the seized goods could be auctioned, however, the first two defendants applied for and succeeded in having the judgment in default and the attachment proceedings set aside. They were allowed to file their statements of defence. Subsequently, the defendants published notices in Chinese in two local dailies, stating that the judgment and attachment order had been set aside and that the company was resuming business. The notice also stated that legal action would be taken against the plaintiff for the damages suffered. The plaintiff filed an action alleging that it had been defamed by the notice and that the defendants were also in contempt of Court, and claimed damages. It also applied for an injunction to refrain the defendants from further publications of a similar nature.

Held:

[1] No *prima facie* case of libel was apparent on the face of the notice that warranted the granting of the injunction. There was nothing offensive or abusive of the plaintiff in the statement, which merely stated the true facts.

[2] Neither was there any contempt of Court. No reference or comment had been made in the notice regarding the proceedings pending between the parties.

[3] In any case, an injunction was unnecessary, as there was no evidence to show any likelihood of further publication of the notice.

[Application dismissed.]

For the plaintiff - Thakurdas (Kem Kumar with him)
For the defendants - Lee Shan Too

JUDGMENT

Siti Norma Yaakob J:

On 3 October 1984, the plaintiff filed this action alleging that it has been defamed by the defendants when they published advertisements in two national Chinese dailies on 1 September 1984, which were calculated to cause harm and damage to its business reputation. By such publications the plaintiff also alleges that the defendants are in contempt of Court for which it claims damages. Together with the filing of the writ and Statement of Claim, the plaintiff also filed an *ex-parte* summons in chambers praying for an injunction to refrain the defendants, their servants or agents from further publishing similar defamatory words as

contained in the advertisements. At the first instance, I had directed that the plaintiff serve all the necessary papers to the defendants and as a result, hearing of the application for the injunction from the very beginning was heard *inter-partes* before me.

Prior to the commencement of this present proceedings, the plaintiff had sued the first and second defendants for a sum of RM83,357.38 being the outstanding balance of goods sold and delivered by the plaintiff to the defendants. In that action, Kuala Lumpur Civil Suit C. 2171/83, the plaintiff had, on 27 October 1983, obtained judgment in default of appearance against both the first and second defendants. By a writ of seizure and sale, it proceeded to enforce the judgment by attaching all the movable properties belonging to the first and second defendants which were then lying at No. 7, Jalan Bacang, Malacca, premises belonging to Ann Fatt Electronics Sdn. Bhd., the third defendant in the action before me. However, before the seized goods could be auctioned, the first and second defendants applied for and succeeded in having the judgment in default of appearance entered against them, and the attachment proceedings levied against their properties, set aside. They were allowed to file their Statements of Defence to the action and the suit is still pending.

Following this, on 1 September 1984, the first, second and third defendants, in the action before me published two similar notices in Chinese in two local dailies, the Nanyang Siang Pau and Sin Chew Jit Poh, the translation of which reads as follows.

> Chan Mok On
> On Fatt Electronics Services
> Ann Fatt Electronics Sdn. Bhd.
> 71, Jalan Bacang, Melaka. TEL: 06-224281.
>
> **Announcement of the Resumption of Business**
>
> It is hereby announced that this Company, has, on 27 August 1984, obtained the approval of the High Court in Kuala Lumpur, to set aside the judgment and attachment order granted to Siong Electronics (M) Sdn. Bhd., the Plaintiff, against the Company in its absence.
>
> This Company will take legal action against the above plaintiff for the damages suffered.
>
> This Company decides to resume business officially today (1 September 1984). It extends its heart-felt thanks to its associates, in business and in finance, customers, friends and relatives, who have renders strong support and cooperation during the period relating to this matter.
>
> CHAN MOK ON
> Board of Directors
>
> 1 September 1984.

It is this very notice that the plaintiff now alleges contains defamatory words and for which it seeks to refrain the defendants from further publishing them.

The plaintiff maintains that the first paragraph of the notice in its natural and ordinary meaning can be understood to mean that the judgment in default and the attachment were wrongly obtained and that the publication of the notice also amounts to a contempt of Court as it was calculate to prejudice the trial on Kuala Lumpur Civil Suit C. 2171/83. Looking at the notice itself, I cannot imagine how the plaintiff could have arrived at that calculation and this had prompted me from the beginning to have the application heard *inter-partes* rather than *ex-parte*. The defendants have explained, both in their affidavit in reply to the application and in their submissions made before me that the third defendant's premises was under attachment for 2 months and during that period, they were unable to carry on with their own business. After the attachment was lifted, they had published the offending notice for the

sole purpose of informing their customers and business associates that they were resuming business as at the date of the notices. Looking at the first paragraph of the notice, it merely states that the defendants have been successful in setting aside the judgment in default of appearance and the attachment order entered by the plaintiff against them. I see nothing offensive to the statement as it merely states the true facts. It would have been different if the defendants had gone further to express words malicious or abusive of the plaintiff. Reading the notice in its entirety, I consider that it is no more than what it purports to be, i.e. it is a notice of general information that the defendants were resuming their business on 1 September 1984 after they had been successful in setting aside the default judgment and attachment order that had been obtained against them by the plaintiff. As the notice does not make any reference or comment on the proceedings of Civil Suit C. 2171/83, I cannot see how the defendants can be said to be in contempt of Court. As the purpose of applying the injunction is to prevent further publication of the notice (assuming that it contains defamatory words), I am satisfied that there is no evidence to show any likelihood of that happening. In this respect, the plaintiff, relies on the following endorsement made by the process server when he served the writ on the first defendant which reads as follows.

> ... the said Chan Mok On refused to accept service of the said writ of summons and further threatened that he will publish further publication to defame the plaintiff.

When I questioned the parties whether any positive steps had been taken by the defendants to carry out such a threat. I was told there had not been any further publication of the notice and I can only conclude that the first defendant's action in threatening to do so was that of a man annoyed with being served with a writ.

From the facts and circumstances of this case, I am satisfied that no *prima facie* case of libel is apparent on the face of the notice that warrants my granting the injunction that is being sought for by the plaintiff. On that finding, I had accordingly dismissed the plaintiff's application with costs.

Also found at [1985] 1 CLJ 287